

OGC REVIEW  
COMPLETED

*Gilti*  
8 December 1946

MEMORANDUM FOR: Executive for P&A

VIA: Assistant Chief, Finance Division

Subject: APPOINTMENTS FOR (RETIRED OFFICERS)

*Legal Review*

*Dugay*

STATINTL

1. On 2 December the undersigned discussed with [redacted] the problems involved in employment of retired Army and Navy officers. If such officers are retired for battle injuries or incapacity incurred in the line of duty, they may be freely employed with no salary limitations. Therefore, this discussion is limited to those retired under other provisions of law, i.e., for age or at their own request.

2. If the retirement pay is under \$2500, they may be employed, but their total compensation from retirement pay and that of their appointive position may not together exceed \$3000 [5 U.S.C. 59(a)]. If their retirement pay exceeds \$2500, these officers may not be appointed to another office in the Federal Government [5 U.S.C. 62]. Consequently, they could not be put in a classified civil service permanent or an indefinite appointment. However, the Comptroller General has ruled that a temporary appointment is not an office within the meaning of Section 62 of 5 U.S.C. [see Decision 19 Comptroller General 391 and citations contained therein]; although the temporary appointment is a position in the Government within the meaning of 5 U.S.C. 59(a) and consequently the \$3000 limitation of combined pay must be observed. The officer may, however, elect to waive his retired pay and accept the compensation attaching to the position to which appointed [see 14 Comp. Gen. 68; 10 Comp. Gen. 25; also 13 Comp. Gen. 60 and 448]. The incoming Congress may well change the statutory provisions during the next term, but until that time we may not put on the regular payroll an officer retired for age or at his own request whose retirement pay is in excess of \$3000.

3. This memorandum is being routed through the Assistant Chief, Finance Division, for comment on the various possibilities involved in temporary appointments, such as a limitation to months, WOC and WAE employment. The decision of Navy JAG [F16-3(18)/OR], dated 1 June 1943, which [redacted] submitted, in our opinion, tends to bear out the observations made above. This opinion is available in this office.

STATINTL

LRH/mll

LAWRENCE N. HOUSTON  
General Counsel